

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MARIA DE LA O, et al.,  
  
Plaintiffs,  
  
v.  
  
ROBIN ARNOLD-WILLIAMS, et  
al.,  
  
Defendants.

NO. CV-04-0192-EFS

**ORDER GRANTING JOINT MOTION TO  
VACATE ORDERS DECLARING RCW  
4.24.350(2) UNCONSTITUTIONAL AND  
GRANTING JOINT MOTION (Ct. Rec. 798)  
TO APPROVE CLASS SETTLEMENT WHICH IS  
CONDITIONED A COURT ORDER VACATING  
ORDERS DECLARING RCW 74.15.030(7),  
RCW 74.15.080(1), WAC 388.296.0450  
and WAC 388. 296.0520 (Ct. Recs. 511  
and 745)**

MARIA FERNANDEZ, et al.,  
  
Plaintiffs,  
  
v.  
  
DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES, et al.,  
  
Defendants.

[NO. CV-05-0280-EFS]

Before the Court are two motions. Plaintiffs and State Defendants jointly ask the Court to vacate its rulings declaring unconstitutional RCW 4.24.350(2) (Ct. Recs. 289 and 518) and also, as a condition of the Class Settlement, to vacate its rulings declaring unconstitutional RCW 74.15.030(7), RCW 74.15.080(1), WAC 388.296.0450, and WAC 388.296.0520

(Ct. Recs. 511 & 745). Ty Duhamel and Joachim Morrison appeared on behalf of the *Fernandez* Plaintiffs, and Katrin E. Frank appeared on behalf of the *De La O* Plaintiffs. Several Plaintiffs also attended. Appearing for State Defendants were Carrie Bashaw and John McIlhenny, Jr.

**A. Background**

On August 12, 2008, the Court entered an Order Approving Class Settlement. (Ct. Rec. 828.) In a separate Order, the Court indicated that it would grant the motions asking for vacatur of its Orders holding the pertinent statutes and regulations unconstitutional if it approved the proposed Class Settlement. (Ct. Rec. 830.) The Court intended to enter that Order some weeks ago but overlooked it. Having approved the settlement, the Court now addresses the basis for vacating the pertinent Orders as identified above.

**B. Standard**

The Court's authority to vacate these Orders is found in Federal Rule of Civil Procedure 54(b), which states:

[A]ny order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

FED. R. CIV. P. 54(b) (2008). A court has complete power over interlocutory orders made therein and has authority to revise them when it is "consonant with equity" to do so. *Simmons v. Brier Bros Co.*, 258 U.S. 82 (1922); see *U.S. Gypsum Co. v. Pac. Award Metals*, 2006 WL 1825705 (N.D. Cal. 2006) (agreeing to vacate an interlocutory order at the parties' request).

1 Where, as here, the Court is being asked to vacate its rulings  
2 finding state statutes and regulations are unconstitutional, the  
3 remaining parties' interests to a lawsuit is only one of several factors  
4 that the Court considers. In considering vacatur of its ruling(s), a  
5 district court should evaluate whether all parties involved in the  
6 ruling(s) request and agree to vacatur as a condition of a proposed  
7 settlement of the action; whether the ruling(s) held a law or regulation  
8 unconstitutional and, if so, what public interest inheres in the ruling;  
9 whether laws or regulations have been enacted that remedy the  
10 constitutional defect found by the judge thereby securing the public  
11 interest in the constitutionality of the laws; whether a former party to  
12 the action would be adversely affected by vacatur; and whether the costs  
13 of continuing the action with uncertain results are outweighed by the  
14 benefits of the proposed settlement of the action. These considerations  
15 immediately present themselves in this case though there may well be  
16 other considerations in a different case.

17 **C. Application and Analysis**

18 Plaintiffs filed this lawsuit in order to prevent the State child  
19 care and fraud inspectors from wrongfully entering and searching day care  
20 provider homes and seizing personal documents. The Court found RCW  
21 74.15.050, RCW 74.15.080, WAC 388-296-040, and WAC 388-296-0520  
22 unconstitutionally overbroad. (Ct. Rec. 511.) The State represented  
23 that it needed time to go through the traditional process to adopt  
24 emergency regulations to remedy the defects found in those regulations.  
25 The State further represented that it would abide the Court's ruling on  
26 those regulations and would not conduct activities under those

1 regulations or statutes that would violate the Court's rulings. Based  
2 on those representations and the benefit to all parties from such State  
3 action, the Court held in abeyance for several months a motion to enjoin  
4 enforcement of those statutes and regulations in order to allow the State  
5 to draft, file, and ultimately adopt the necessary emergency regulations  
6 to remedy their constitutional defects and those of the related statutes.  
7 (Ct. Rec. 511.) The State Defendants promptly promulgated emergency  
8 regulations effective December 18, 2006, which effectively narrowed the  
9 time and place of inspections. (Ct. Rec. 513.) Ultimately, the Court  
10 declined to enter an injunction because, "[T]he amended provisions  
11 sufficiently narrow the time and place of inspections to render the  
12 warrantless searches constitutional, if conducted in accordance with the  
13 revised regulations." (Ct. Rec. 745, p. 8, ll. 8-10.) This provided the  
14 Plaintiffs individually and as a Class with the result sought.

15 The Proposed Class Agreement provides the Class with specific  
16 enforceable protections against the Department of Early Learning (DEL),  
17 which agreed to be a party to the agreement, including (1) the right to  
18 receive a Home Entry Letter<sup>1</sup> setting forth the provider's rights and (2)  
19 modifications to the Department of Fraud Investigations investigator  
20 manual that limit an investigator's authority. Importantly, the Proposed  
21 Class Agreement provides these protections upon Court approval. In  
22 comparison, the State Defendants' appeal of the qualified immunity  
23 rulings will likely not be resolved until 2010 and then trial will likely  
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25 <sup>1</sup> The Home Entry Letter is in English on one side and in Spanish on  
26 the reverse side.

1 not occur until 2011. The certain cost of continuing the case will be  
2 significant and the results of both the current State appeal and the  
3 action itself are uncertain with considerable risk of an adverse outcome  
4 for Plaintiffs. Additionally, the remedial regulations enacted by the  
5 State benefit both the Plaintiffs and the public interest in the  
6 constitutionality of the laws of the State of Washington. Further, the  
7 Proposed Class Agreement provides the individual Plaintiffs with  
8 compensation for past constitutional violations. Each of the named  
9 Plaintiffs will receive \$45,000.00; Columbia Legal Services will receive  
10 \$350,000.00 in fees and costs for its diligent representation of  
11 Plaintiffs. The Court has read with considerable attention the  
12 Declaration of D. Ty Duhamel In Support of Joint Motion to Tentatively  
13 Approve Class Settlement (Ct. Rec. 801) and is persuaded by the detailed  
14 description of the work of counsel and the benefits to Plaintiffs and  
15 Class that vacatur is just. Based on the above, the Court finds vacatur  
16 of the Orders finding unconstitutional the specific statutes and related  
17 regulations will better serve the Class, the individual Plaintiffs, and  
18 the public.

19 Next, the Court turns to RCW 4.24.350(2) - the statute that was the  
20 basis for the counterclaim filed by the individual Mattawa Defendants.  
21 RCW 4.24.350(2) gives judicial officers, prosecuting authorities, or law  
22 enforcement officers the right to file a claim(s) or counterclaim(s) for  
23 what amounts to malicious prosecution against those who sued them. The  
24 Court found that section of the statute unconstitutional. (Ct. Rec. 289.)  
25 That ruling and the Court's ruling denying individual Mattawa Defendants  
26 qualified immunity under § 1985 were appealed. (Ct. Rec. 568.) The

1 State Defendants filed a separate appeal (Ct. Rec. 574), which was later  
2 dismissed by the Ninth Circuit (Ct. Rec. 653).

3 In due course, the Plaintiffs and the individual Mattawa Defendants  
4 reached a satisfactory resolution. They filed a stipulation to dismiss  
5 their claims and counterclaims against each other. (Ct. Rec. 720.) The  
6 Court permitted Plaintiffs to amend their complaint to remove those  
7 claims; the complaint was amended, and the individual Mattawa Defendants  
8 along with their counterclaims under RCW 4.24.350(2) were effectively  
9 removed from the case. This settlement thereby mooted the appeal by the  
10 individual Mattawa Defendants of the Court's ruling holding RCW  
11 4.24.350(2) unconstitutional. The result is that the State is not now  
12 in a position to appeal the Court's interlocutory ruling declaring RCW  
13 4.24.350(2) unconstitutional. See *Blair v. Shanahan*, 919 F. Supp. 1361,  
14 1365 (N.D. Cal. 1996). Indisputably, however, the constitutionality of  
15 RCW 4.24.350(2) is of considerable importance to the State because of its  
16 impact on state judicial officers, prosecuting authorities, and law  
17 enforcement officers. The State's inability to challenge the Court's RCW  
18 4.24.350(2) ruling is an unintended result of the settlement between the  
19 individual Mattawa Defendants and the Plaintiffs, i.e., their dismissal  
20 mooted the appeal challenging the Court's RCW 4.24.350(2) counterclaim  
21 ruling. Further, vacatur works no injustice to the now non-party  
22 individual Mattawa Defendants. It achieves the very result sought in  
23 appealing the Court's ruling. Under these circumstances, the Court  
24 believes that justice requires the vacatur of this ruling.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. The Joint Motion to Vacate Orders Declaring RCW 4.24.350(2)  
3 **(Ct. Rec. 807)** Unconstitutional is **GRANTED**. The Court's September 25,  
4 2006 Order Granting in Part and Denying in Part *De La O* Plaintiffs'  
5 Motion for Partial Summary Judgment Declaring RCW 4.24.350  
6 Unconstitutional and Dismissing Counterclaim **(Ct. Rec. 289)** and January  
7 3, 2007 Order Ruling on Motions for Reconsideration **(Ct. Rec. 518)** are  
8 **VACATED**.

9 2. As previously memorialized, the Joint Motion seeking vacatur  
10 of Orders declaring RCW 74.15.030(7), RCW 74.15.080(1), WAC 388.296.0450  
11 and WAC 388.296.0520 unconstitutional **(Ct. Rec. 798)** is **GRANTED**. The  
12 Court's December 20, 2006 Order Entering Rulings from November 2, 2006  
13 Hearing **(Ct. Rec. 511)** and Order Ruling on Motions for Reconsideration,  
14 Oral Motion for Clarification, and Injunction Requests Held in Abeyance  
15 **(Ct. Rec. 745)** are **VACATED**.

16 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
17 this Order and provide copies to counsel.

18 **DATED** this 28th day of August, 2008.

19  
20 s/Edward F. Shea  
21 EDWARD F. SHEA  
22 United States District Judge

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